



# City of Harrisonburg, Virginia

## Planning Commission Meeting

September 9, 2009

7:00 p.m.

Regular Meeting  
409 South Main Street

- 1) **Call to order, roll call, determination of quorum, and review/approval of minutes from the August 12, 2009 regular meeting.**

- 2) **New Business**

*Special Use Permit – 1430 Red Oak Street (10-3-97(10) Recreational Use)*

Public hearing to consider a request from Jamison Black Marble Wildlife Preserve for a special use permit per Section 10-3-97 (10) of the Zoning Ordinance to allow recreational and leisure time activities within the M-1, General Industrial District. The property is located at 1430 Red Oak Street and can be found on tax map 46-C-8.

*Preliminary Plat – Cypress Park LLC, Subdivision (2009)*

Consider a request from Cypress Park, LLC to preliminarily subdivide 32.9 +/- acres into 79 single family home lots, zoned R-1, Single Family Residential District. Variances are being requested from the Design and Construction Standards Manual Section 3.1.10.2. and from the Subdivision Ordinance Section 10-2-42 (i). The property is located at 1120 Willow Spring Road and can be found on tax map parcels 100-A-3 and 100-B-3.

*Ordinance Amendment – 10-3-139(b) Ten Day Appeal Process*

Public hearing to consider a request to amend section 10-3-139 (b) of the Zoning Ordinance to establish a ten day notice of violation involving temporary or seasonal commercial uses, maximum occupancy limitation of a residential dwelling unit, keeping of inoperable vehicles and junk, or similar short term, recurring violations.

- 3) **Unfinished Business**

- 4) **Public Input**

- 5) **Report of secretary and committees**

*Proactive Zoning*

- 6) **Other Matters**

- 7) **Adjournment**

Staff will be available Tuesday October 13, 2009 at 2:30 p.m. for those interested in going on a field trip to view the sites for the October 14, 2009 agenda.

**SITE**



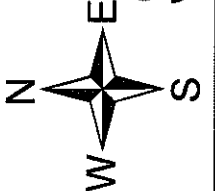
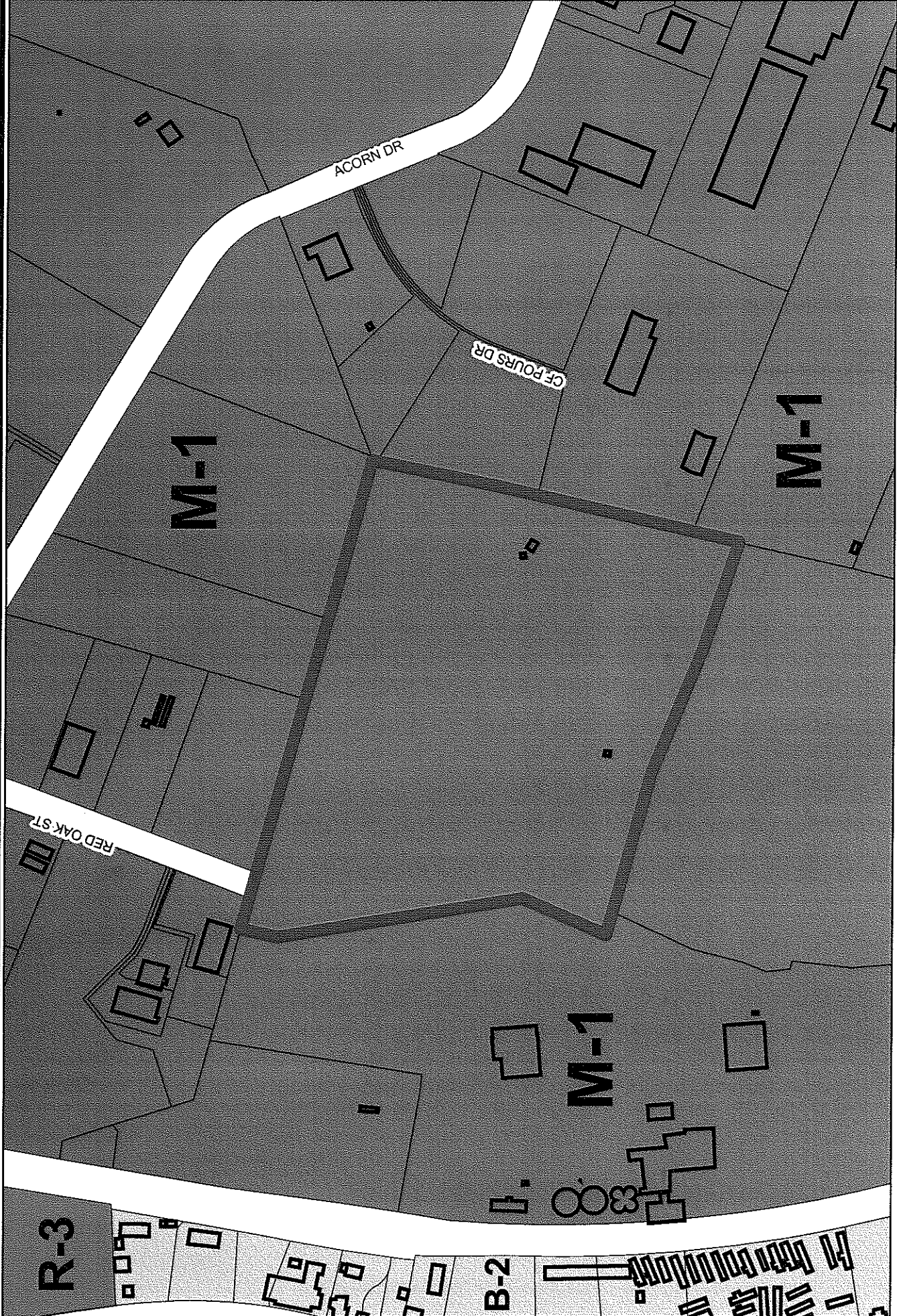
Planning and Community Development  
City of Harrisonburg, Virginia



**CITY OF HARRISONBURG**

Special Use Permit  
1430 Red Oak Street  
Sec. 10-3-97 (10) - Recreational Use  
Tax Map: 46-C-8  
16.9 +/- acres

**LOCATION MAP**



**1430 Red Oak Street**

**S.U.P. 10-3-97 (10) Recreational Use**



# City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

## STAFF REPORT September 9, 2009

### SPECIAL USE PERMIT – RECREATIONAL & LEISURE TIME ACTIVITIES - 10-3-97(10)

#### GENERAL INFORMATION

**Applicant:** Jamison Black Marble Wildlife Preserve, with representative Blackwell Engineering  
**Tax Map:** 46-C-8  
**Acreage:** 16.9 +/- acres  
**Location:** 1430 Red Oak Street  
**Request:** Public hearing to consider a request for a special use permit per Section 10-3-97 (10) of the Zoning Ordinance to allow recreational and leisure time activities within the M-1, General Industrial District.

#### LAND USE, ZONING, AND SITE CHARACTERISTICS

The Comprehensive Plan designates this area as General Industrial. This designation states that these areas are composed of land and structures used for light and general manufacturing, wholesaling, warehousing, high-technology, research and development, and related activities.

The following land uses are located on and adjacent to the property:

Site: Old quarry site and undeveloped property, zoned M-1  
North: Undeveloped properties, zoned M-1  
East: Contractors, building material sales/storage, zoned M-1  
South: Corn field/undeveloped land, zoned M-1  
West: Pilgrims Pride, zoned M-1

#### EVALUATION

The applicant is requesting a special use permit to allow the property at 1430 Red Oak Street to be used for recreational and leisure time uses as permitted within Section 10-3-97 (10) of the Zoning Ordinance. Previously an old quarry site, the property is now what the owners describe as a wildlife habitat that consists of a lake, cliffs, wooded and open areas. The current owners use the acreage as a retreat for themselves, family and friends where they can camp, picnic, swim, fish and more. At times small groups, such as a local sports team, will use the quarry to relax and swim. Historically, goats have been kept at the quarry site; and the current owners continue to keep two goats there to help clear some of the vegetation.

At this time the owners wish to construct two cabins on the acreage. The cabins would provide the site with shelter, kitchen areas and indoor bathrooms with running water. Because the property is zoned M-1, General Industrial this type of housing structure is not a use permitted by right. Currently a 28' by 40' storage building is being constructed at the site; storage and warehouse buildings are permitted

by right in the M-1 zoning district. The cabins, however, would further facilitate all the recreational uses, more so than a storage building and for that reason the owners are requesting the recreational and leisure time special use permit.

A perimeter fence surrounds the 16+ acres and it is gated and locked from the general public. The owners intend to keep using the quarry habitat in the same private manner and have stated that due to liability costs the area will remain closed to the public. The cabins will not be leased or rented to transient occupants and will be used only by family and friends who are there enjoying recreational activities at the site. In discussions with staff, the applicants have said that there are some recreational activities that they do not allow, such as jet skies or water skiing; the quarry is not conducive to such type uses with its high cliff walls.

The owners have stated that the quarry habitat would be utilized by family members and friends and closed to the general public. Although staff does not have any major concerns with the described uses for this request, there are other more intense recreational and leisure time activities that could occur which may increase visitors to the site and cause traffic and parking concerns. Therefore, staff proposes placing some conditions on the special use permit so that it is not open ended for all recreational and leisure time activities, but limited to those listed by the owners. Staff recommends 1) limiting the site to the two proposed cabins only; 2) that the cabins cannot be occupied on a long term basis and 3) staff shall be authorized to review any complaints received regarding the property and based on their finding may require the applicant to return to Planning Commission and City Council for a public hearing to re-examine the use of the property. Such re-evaluation may result in additional conditions being placed on the use or revocation of the special use permit.

Staff supports this request and a favorable recommendation to City Council with the conditions listed above.



**Proposed Use:**

The former owner (WLR) kept the quarry and surrounding acreage mainly as a wildlife habitat, leaving the property undeveloped. When the current owners bought the property (hereafter called the quarry) in 1996, they too decided to keep the quarry as a wildlife habitat. Due to the liability of the cliffs and 60 foot deep lake, the quarry has been and will continue to be closed to the public.

Over the last 13 years the quarry has been used for private recreational activities by the owners, their families, and close friends. These activities have included swimming, fishing, boating, scuba diving, bird watching, picnics\private parties, and camping. It is very rare to find a weekend from April to October that the quarry is not being used for one or more of these activities.

The owners plan to keep using the quarry in the same manner, but would like to construct two cabins, which is the reason for the special use permit. These cabins will be used to facilitate the existing uses of camping, picnicking, and private parties, as well augment the entire use of the property by providing an indoor bathroom with running water. To be blunt, one owner is tired of sleeping on the ground in a tent when camping with his kids, and using the existing outhouse (port-a-pot).

The quarry is a beautiful and tranquil place to enjoy. It is a hidden gem, providing a country-like setting all while being within the borders of the City. The cabins will provide a few modern facilities and conveniences that will allow the owners, their families, and friends to enjoy the recreation use of the quarry for years to come.

The proposed property is currently used for recreational activities. Recreational activities **include, but are not limited to:**

1. Swimming, floating or any activity that causes all or part of your body to be submerged in water
2. Diving and any other type of jumping from higher objects into water or land
3. Running or walking
4. Sunbathing
5. Cooking food, including use of any materials, objects or methods used in cooking food
6. Consumption of food and beverages (including alcoholic beverages for individuals 21 and over)
7. Hosting picnics/parties
8. Non-Motorized boating (canoeing, kayaking, etc.)
9. Sitting
10. Fishing
11. Scuba Diving
12. Climbing rocks
13. Camping
14. Bird Watching
15. Remote controlled vehicles including, but NOT limited to, cars, trucks and/or boats

In order to facilitate and host the above mentioned recreational activities, a structure(s) is needed to house equipment, offer lodging and shelter including bathroom facilities, provide cooking equipment and food storage, etc. The proposed special use would allow such a structure(s) to be built.

Date Application Received: 08-11-09

**Application for Special Use Permit**  
**City of Harrisonburg, Virginia**

Fee: \$325.00

Total Paid: \$ 325.00

Property Owner's Name: JAMISON BLACK MARBLE WILDLIFE PRESERVE

Street Address: 566 EAST MARKET ST Email: \_\_\_\_\_

City: HARRISONBURG State: VA Zip: 22801

Telephone: Work 432-9555 Fax — Mobile —

Owner's Representative: BLACKWELL ENGINEERING (ED BLACKWELL)

Street Address: 566 EAST MARKET ST Email: ED@BLACKWELLENENGINEERING.COM

City: HARRISONBURG State: VA Zip: 22801

Telephone: Work 432-9555 Fax 434-7604 Mobile \_\_\_\_\_

**Description of Property and Request**

Location (Street Address): 1430 RED OAK

Tax Map Number Sheet: 46 Block: C Lot: 8 Lot Area: 16.9 ± ACRES

Existing Zoning Classification: M-1

Special Use being requested: SEC. 10-3-97(10)

RECREATIONAL & LEISURE TIME ACTIVITIES

Please provide a detailed description of the proposed (use additional pages may be attached): \_\_\_\_\_

SEE ATTACHED

Names and Addresses of Adjacent Property Owners (Use separate sheet for additional names)

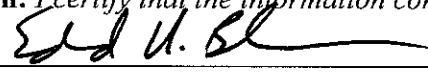
North: SEE ATTACHED

South: \_\_\_\_\_

East: \_\_\_\_\_

West: \_\_\_\_\_

**Certification:** *I certify that the information contained herein is true and accurate.*

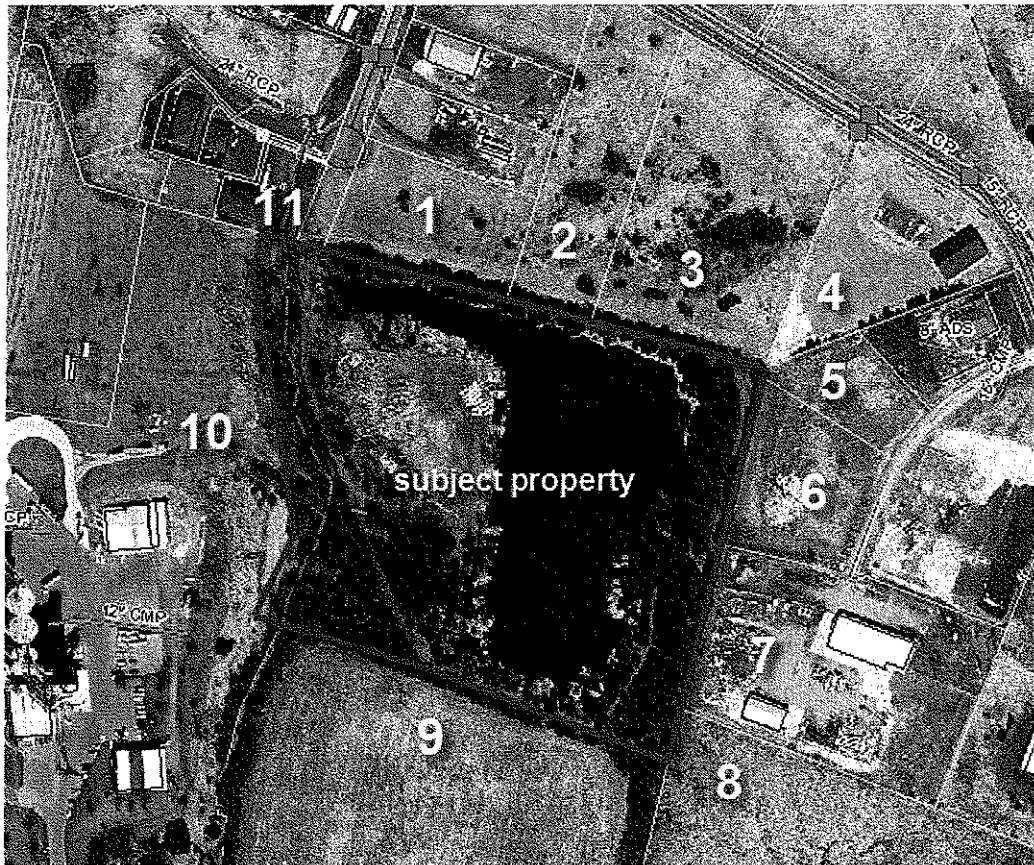
Signature:   
Property Owner

**ITEMS REQUIRED FOR SUBMISSION**

- ☐ Completed Application
- ☐ Site Plan
- ☐ Description of Proposed Use
- ☐ Adjacent Property Owners

- ☐ Fees Paid
- ☐ Property Located on Tax Map
- ☐ \_\_\_\_\_
- ☐ \_\_\_\_\_





Subject Property:  
46-C-8

Jamison Black  
Marble Wildlife  
Preserve, LLC

566 East Market St.  
Harrisonburg, VA  
22801

M-1

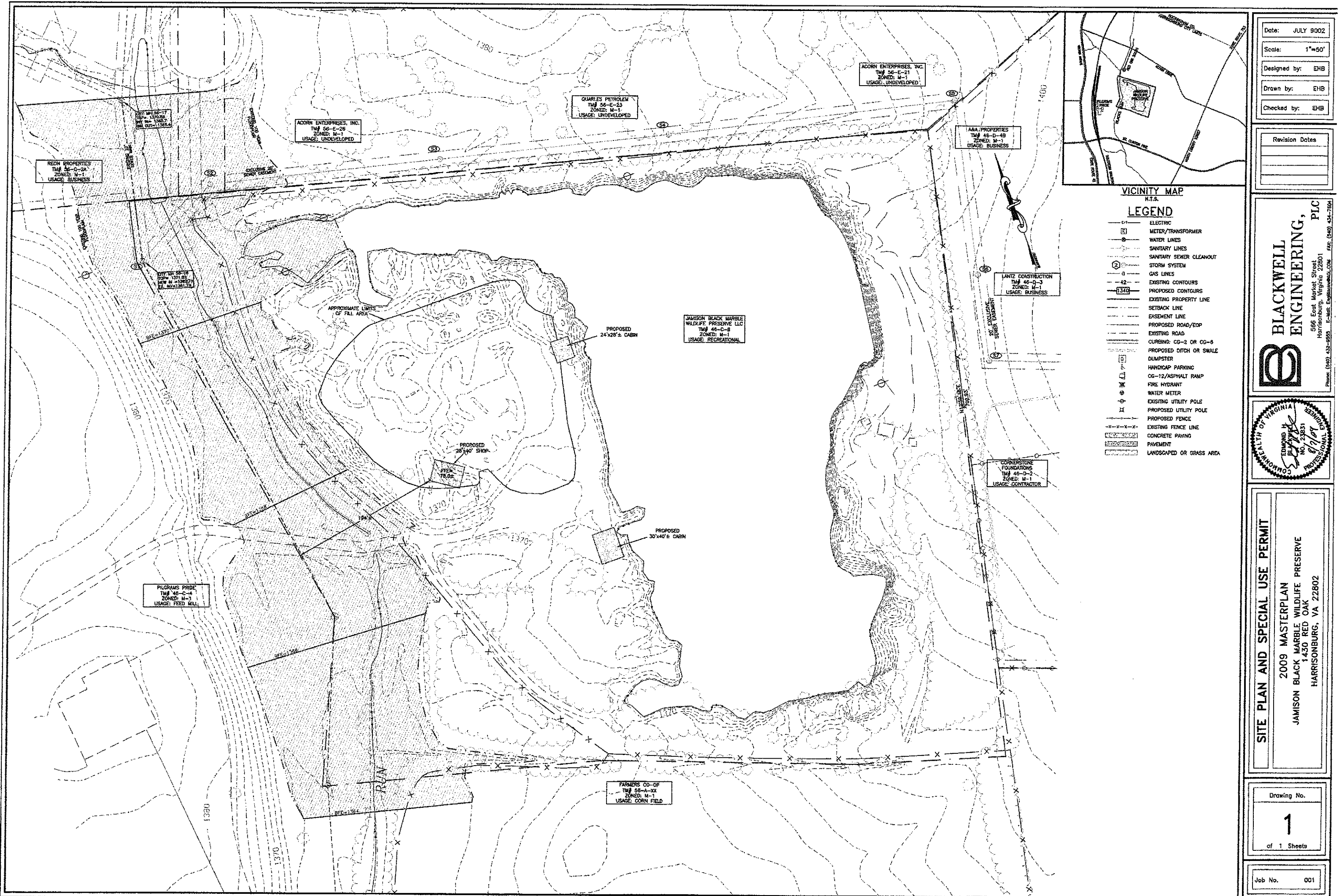
1. Tax Map: 56-E-26  
Owner: Acorn Enterprises  
Address: 5777 Jesse Bennett Way  
Linville, VA 22834  
Zoning: M-1  
Usage: Undeveloped
2. Tax Map: 56-E-23  
Owner: Quarles Petroleum  
Address: 1701 Fall Hill Ave., Ste. 200  
Fredericksburg, VA 22401  
Zoning: M-1  
Usage: Undeveloped
3. Tax Map: 56-E-21  
Owner: Acorn Enterprises  
Address: 5777 Jesse Bennett Way  
Linville, VA 22834  
Zoning: M-1  
Usage: Undeveloped
4. Tax Map: 56-E-20  
Owner: CB Realty Holdings LP

- Address: 202 Okran Road  
New Holland, PA 17557
- Zoning:  
Usage:
5. Tax Map: 46-D-4B  
Owner: A&A Property Management Group, LLC  
Address: PO Box 201  
Harrisonburg, VA 22801  
Zoning: M-1  
Usage: Business
6. Tax Map: 46-D-3  
Owner: Lantz Investments, LLC  
Address: PO Box 515  
Broadway, VA 22815  
Zoning: M-1  
Usage: Business
7. Tax Map: 46-D-2  
Owner: Windsong, LLC  
Address: 1595 Blackberry Lane  
Harrisonburg, V 22802  
Zoning: M-1  
Usage: Contractor
8. Tax Map: 46-C-7  
Owner: Shifflett, Wayne G.  
Address: 1511 North Liberty Street  
Harrisonburg, VA 22802  
Zoning:  
Usage:
9. Tax Map: 46-C-4A  
Owner: Rockingham Cooperative Farm Bureau, Inc.  
Address: 101 Grace Street  
Harrisonburg, VA 22801  
Zoning: M-1  
Usage: Corn Field
10. Tax Map: 46-C-4  
Owner: Wampler Foods, Inc  
C/O Joe Nears  
Address: PO Box 93  
Pittsburg, TX 75686  
Zoning: M-1  
Usage: Feed Mill

Prepared by: Blackwell Engineering  
Jamison Black Marble Wildlife Preserve

Adjacent Property Owners  
08/07/2009

11. Tax Map: 56-G-2A  
Owner: REON Properties, LLC  
Address: 1555 Red Oak Street  
Harrisonburg, VA 22802  
Zoning: M-1  
Usage: Business

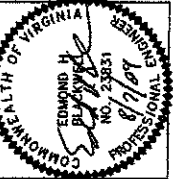


Date: JULY 9002  
Scale: 1"=50'  
Designed by: EHB  
Drawn by: EHB  
Checked by: EHB

Revision Dates

**BLACKWELL  
ENGINEERING, PLC**

566 East Market Street  
Harrisonburg, Virginia 22801  
Phone: (540) 432-9555 E-Mail: [Engineering@blackwell.com](mailto:Engineering@blackwell.com) FAX: (540) 434-7804

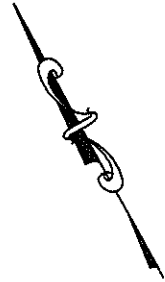
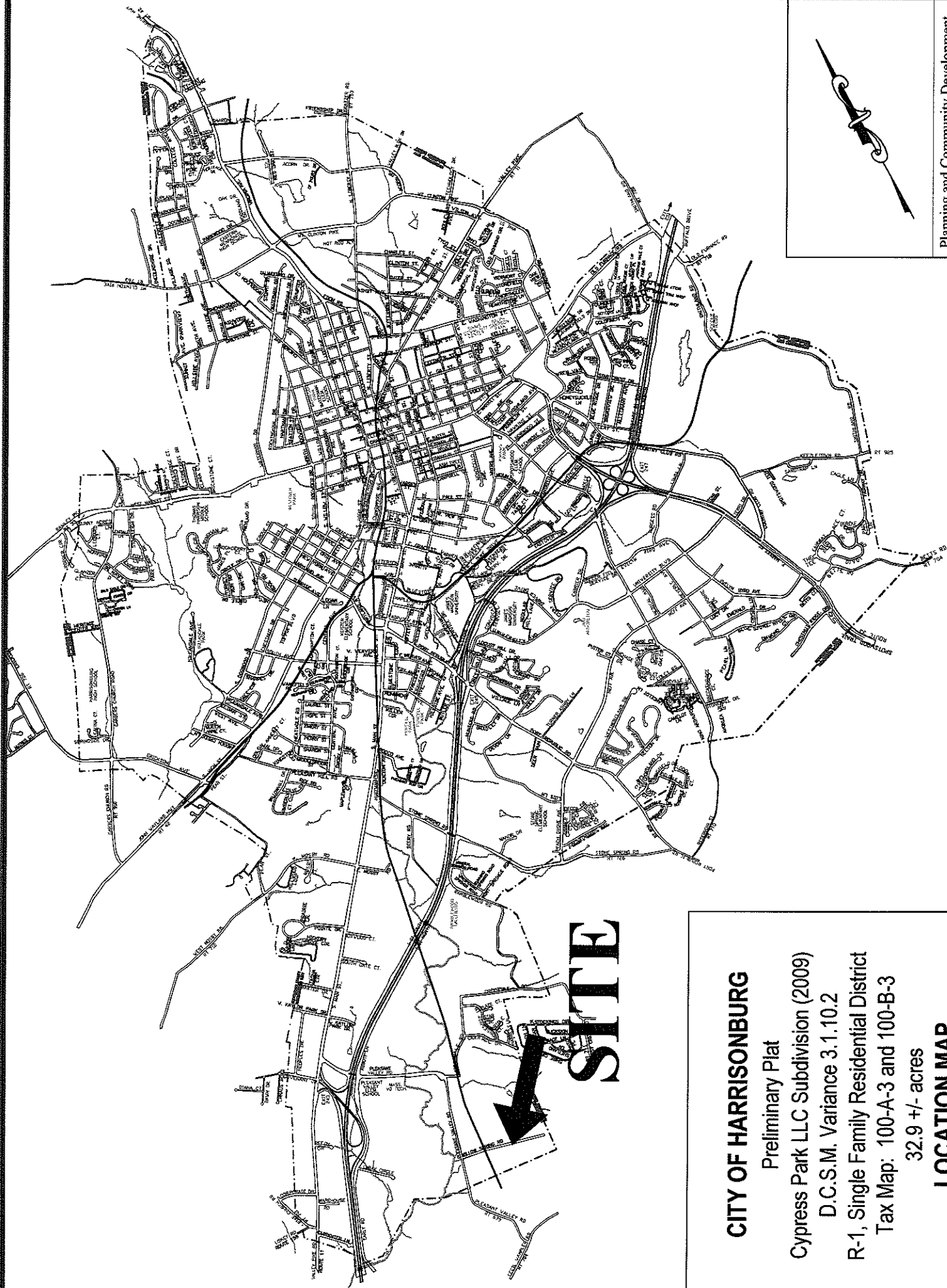


**SITE PLAN AND SPECIAL USE PERMIT**

2009 MASTERPLAN  
JAMISON BLACK MARBLE WILDLIFE PRESERVE  
1430 RED OAK  
HARRISONBURG, VA 22802

Drawing No.  
**1**  
of 1 Sheets

Job No. 001



Planning and Community Development  
City of Harrisonburg, Virginia

## CITY OF HARRISONBURG

Preliminary Plat

Cypress Park LLC Subdivision (2009)

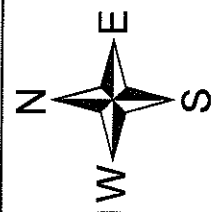
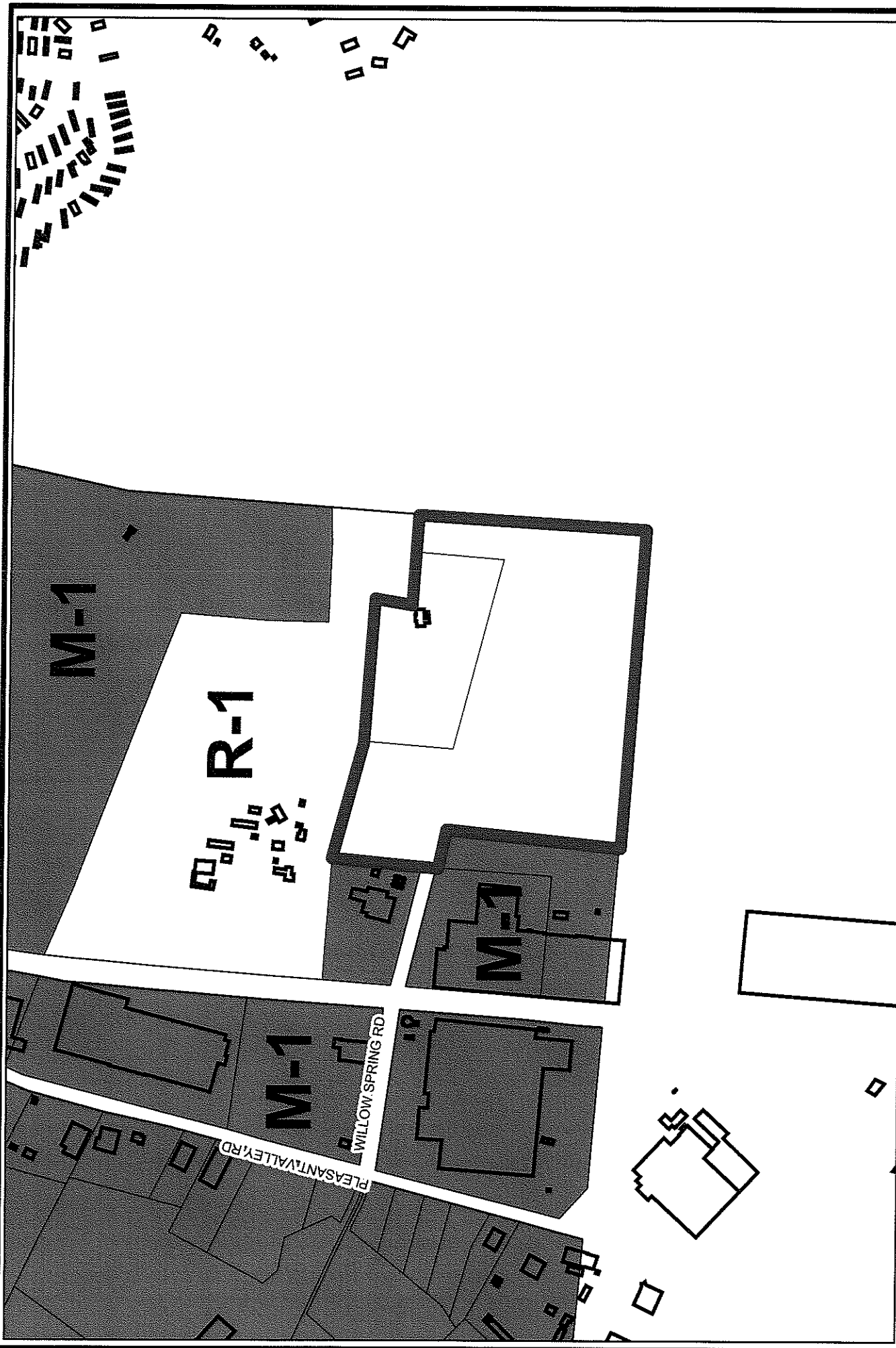
D.C.S.M. Variance 3.1.10.2

R-1, Single Family Residential District

Tax Map: 100-A-3 and 100-B-3

32.9 +/- acres

## LOCATION MAP



# Cypress Park LLC Subdivision Preliminary Plat (2009)



# City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

**STAFF REPORT**  
**September 9, 2009**

## **PRELIMINARY PLAT – CYPRESS PARK LLC**

### **GENERAL INFORMATION**

**Applicant:** Cypress Park, LLC  
**Tax Map:** 100-A-1 & 3 and 100-B-3  
**Acreage:** 32.9 +/- acres  
**Location:** Willow Spring Road  
**Request:** Consider a request to preliminarily subdivide 32.9 +/- acres into 79 single family home lots and 2 common area lots zoned R-1, Single Family Residential District. A variance is being requested from the D.C.S.M. Section 3.1.10.2. and from the Subdivision Ordinance Section 10-2-42 (i).

### **LAND USE, ZONING, AND SITE CHARACTERISTICS**

The Comprehensive Plan designates this area as General Industrial. This designation states that these areas are composed of land and structures used for light and general manufacturing, wholesaling, warehousing, high-technology, research and development, and related activities.

The following land uses are located on and adjacent to the property:

**Site:** Single family home and undeveloped land, zoned R-1  
**North:** Land owned by Rockingham County, zoned R-1  
**East:** County property, owned by Rockingham County and used for landfill operations  
**South:** County property, zoned R-3C for single family homes  
**West:** Industrial uses, zoned M-1

### **EVALUATION**

The applicant is requesting to preliminarily subdivide 32.9 +/- acres into 79 single family home and two common area lots on property zoned R-1, Single Family Residential District in the southern most portion of the City. Although there are seven different streets within the City portion of this development, five of which end as cul-de-sacs, the property would have only one public street entering into the neighborhood to serve the entire community and therefore staff interprets it as one, large cul-de-sac. Therefore, the applicant is requesting a variance from the Design and Construction Standards Manual (DCSM) Section 3.1.10.2 to exceed the City's maximum cul-de-sac length of 800 feet. The applicant is also requesting a variance from the Subdivision Ordinance Section 10-2-42 (i) to allow a common area lot to deviate from the lot dimensions that are required by the Zoning Ordinance.



The subject area has been zoned R-1 since annexation from Rockingham County in 1983. The City's Planning Commission originally proposed this entire area for the M-1, General Industrial District, yet at the public hearing on zoning of the annexed area, the property owner requested an R-1 zoning, which was then recommended by Planning Commission and approved by City Council.

Over the past few years, this property has been proposed to be developed in several different designs. The first application to preliminarily plat this acreage was submitted in August 2004 under the name of Eagle Aerie. The developer applied to plat 190 single-family home lots on 69 acres. The applicant tabled the request and resubmitted another design in June of 2005 under the name Cypress Park. That plan included 182 single-family units on a street layout similar to the first proposal. This proposal was also tabled by the applicant to adjust details.

Then in August 2005, a new plan was submitted because Rockingham County purchased 13.13 acres of land from the original 69 acres. The County planned to use the 13 acres for groundwater monitoring for the adjacent land fill. This plat proposed 142 single family home lots on 56 acres. City staff did not support the request; however the preliminary plat was approved with a variance to the DCSM Section 3.1.10.2 allowing more than 250 vehicle trips per day and to exceed the City's maximum cul-de-sac length. Planning Commission recommended approval of the application with a vote of 3-1 and City Council approved the request 4-0.

After approval of the preliminary plat, the applicant submitted a comprehensive site plan. The last interaction regarding the site plan occurred in November 2006 when the City sent comments back to the applicant's engineer stating the plan was "accepted withheld" pending further revisions. In other words, their engineer had to resolve several issues before it could be approved. The applicant eventually sold 23 additional acres to Rockingham County for groundwater monitoring, which necessitated design changes with their submitted development plans. In addition to these events, the applicant violated Section 10-2-26 (d) of the Subdivision Ordinance, which required them to file a final plat or section thereof within 12 months of the preliminary plat approval date (this ordinance has since been amended from 12 months to 24 months). Due to this violation of the Subdivision Ordinance, the approved preliminary plat became null and void.

In April 2007, the applicant returned to Planning Commission to attempt to renew their preliminary plat. During this review staff again recommended denial of their request. Planning Commission, however, did not vote on this application as the property owner tabled their request during the meeting to work out further details for emergency access. Several months later, staff sent the applicant a letter in January 2008 notifying them their application was no longer active and that a new application and submission would be required to proceed with their development proposal.

The applicant is now requesting to preliminarily subdivide 79 single family home lots on 32.9 +/- acres zoned R-1, Single Family Residential District. To receive approval for this preliminary plat, the applicant must receive a variance from the DCSM Section 3.1.10.2 to exceed the City's maximum cul-de-sac length of 800 feet and to exceed the maximum vehicle trips per day on a residential cul-de-sac, which is 250. An additional variance is also needed from the Subdivision Ordinance Section 10-2-42 (i) to allow one of their common area lots to deviate from the lot dimensions that are required from the Zoning Ordinance.

Staff has several concerns with this plan of development, but the issue of use of the property for residential purposes cannot be considered because the property is zoned appropriately for single family use. The issue that can be called into question for this plan of development is the variance request to

exceed the maximum cul-de-sac length, which more than triples the number of lots that could be built in this area.

This site is in the middle of an area developed with and zoned for intense industrial uses. Although this acreage is zoned for residential purposes, the nature of the surrounding area gives staff great concerns with the attempt to increase the density of residential development. If approved, residents would not only have to live among hazardous noise, dust, and debris but would have to travel through industrial uses with the associated industrial traffic currently using Pleasant Valley Road.

To compound the issue further, this development would literally be a neighbor to the active County landfill, which is jointly used by the City of Harrisonburg. The landfill, to say the least, is not an ideal neighbor. The City receives concerns from residents of other neighboring subdivisions, who are dissatisfied with noise, dust, debris and odors. The creation of Cypress Park, regardless of the number of units, has the potential to cause requirements for more stringent monitoring for groundwater contamination, methane gas mitigation, and other environmental regulations. This has been the situation experienced near the single family homes across the street from the Ramblewood Road ball fields, which is the closed City landfill site. To help separate the proposed subdivision from the landfill, the applicant has proposed a 50-foot in width buffer easement along the rear of the lots that directly abut the active landfill property.

The submitted design illustrates 79 single family home lots that front on public streets and two common area lots. The sizes of the residential lots either meet or exceed the requirements of the R-1 zoning district. Groundwater monitoring wells have already been installed in this area, some of which would be located on single family home lots if this plan of development is approved. After having discussions with the County's Public Works Director, it should be known that the City and/or County could either have to purchase the lots or establish some type of easement for continual maintenance on the lots that have the groundwater monitoring wells.

One of the common area lots would contain stormwater management and house water vaults for the City and the County while the other common area lot would require a variance from the Subdivision Ordinance because it does not have the required 80 feet of street frontage. This particular lot would be a recreational parcel that could be used by all residents of the neighborhood. At a minimum the developer plans to have two park benches and two picnic tables on this parcel. Staff has no concerns with this particular variance request and supports the applicant's request to deviate from the lot dimension requirement. Since the neighborhood would have common areas, a homeowners association will need to be established. The most recent version that staff has of the protective covenants and conditions specifies that the association shall be responsible for all maintenance, repair, and replacement of the common areas and emergency access roads. The City would be responsible for maintenance of the dedicated public streets, including trash pick-up and snow removal.

There is a future section planned for this development that would be located within Rockingham County. In December 2005, Rockingham County rezoned 16.5 acres of adjacent M-1, General Industrial land to R-3C, General Residential Conditional. This section had previously received preliminary plat approval from the County, however it too has expired. This phase planned for an additional 46 lots and would be accessible from two planned City streets ending at the jurisdictional line. The County phase illustrates two potential road extensions in the direction of Pleasant Valley Road; however, there is no guarantee those extensions would ever occur.

As described above, access to the site travels through an intense industrial area. The site is currently accessible by one, substandard public street known as Willow Spring Road. One of the most

complicated concerns for this subdivision is the safe accessibility for the potential residents. Staff interprets the entire development as one large, long cul-de-sac; far exceeding the 800-foot maximum length. The proposed development would generate approximately 750 vehicle trips per day—about 80 in the peak hour—and because there is no guarantee a road would connect from the County phase of this subdivision to Pleasant Valley Road, all vehicles would enter and exit through the City section of the development. Counting both the City and County sections, the entire development would generate approximately 1,200 vehicle trips per day and roughly 130 vehicle trips during the maximum peak hour. The applicant did perform a Traffic Impact Analysis (TIA), which determined that no individual lane groups dropped below a level of service (LOS) C, which is the generally accepted LOS guideline. The proposed development actually would not alter any LOS for the evaluated roads and therefore the developer would not be required to make any road improvements.

To make accessibility issues more complicated though, there is an active railroad crossing, with three trains a day at 10 mph, located on Willow Spring Road that must be traversed in order to enter and exit this development. Currently, the railroad crossing has a “passive warning,” which means there are no flashing lights or gates. There are two different types of warnings, passive and active. Passive warnings have only signage to warn for the upcoming railroad crossing while active warnings can have either flashing lights or gates or both. Staff spoke with Rick Ray, the Administrative Highway Crossings Administrator out of a corporate office for Norfolk Southern in Atlanta, Georgia, who said a diagnostic review determines what type of warning devices are necessary for railroad crossings. In this situation, the developer did not perform a diagnostic review. Mr. Ray did say however, that generally, if a school bus must cross a railroad track, then almost always an active control will be necessary.

To help emergency response services, a 12-foot wide “tar and chip” road within a 20-foot wide emergency access easement would be provided extending almost a half mile from the subject property across the Banta property to Pleasant Valley Road. The emergency access road would be controlled by a locked gate. It would be the responsibility of the homeowner’s association to repair the surface and remove snow. If emergency responders needed to utilize this road, they would travel Pleasant Valley Road to Banta’s southernmost entrance and then travel on the fire lane that circles the rear side of the building and then onto the emergency access road. As noted on the plat, if approved, the emergency access road would be installed during phase one of the development. During previous reviews, the developer was proposing an additional emergency access location from Greendale Road; however that emergency access point is no longer part of this development.

As stated above, the applicant plans to create a 50-foot buffer zone along the lots that directly abut against the active landfill property. In regard to the adjacent County property to the north, the sale agreement between the applicant and Rockingham County discusses the limitations on the use of the 36 adjacent acres and states the buyer shall not use the property as an expansion of the Rockingham County Landfill; staff recommends a buffer be established along the property boundaries of the lots that abut that area. The agreement describes the use of the County property may include groundwater sampling, treatment, testing, remediation, ground cover for the landfill, and other activities considered accessory to a landfill and for any other lawful purpose except as set forth in that section. Although the plat illustrates that a fence and a tree buffer will be established along the northern property boundaries by the County, the applicant’s attorney verified there is no such agreement. He said the County might plant sycamore trees on this adjoining property but for the most part the property would remain a green area. Since the majority of the County property will probably be sparsely wooded or remain an open field, buffering the homes from the proposed uses of the property would be in the best interest of the potential residents.

The plat illustrates a bus stop location and an example of what the bus shelter could look like. The Director of Transportation stated that there would probably not be a transit bus stop within this development and that if future residents wanted to ride the bus they would have to request an on demand pick up and maybe have to walk out to Pleasant Valley Road to meet the bus. He did mention that if the developer plans to install a bus shelter that it could be used as a pick up location for students to ride the school bus. If the developer wants to install a bus shelter he should work with the Transportation Department to determine the best location. Furthermore, if a bus shelter is placed within the development, it should be maintained by the homeowner's association.

The Public Utilities Department has reported a concern with water pressure variations in this area. They have stated that prior to site plan approval for this property; a water hydraulic analysis will be required of the developer, to ensure adequate service is available.

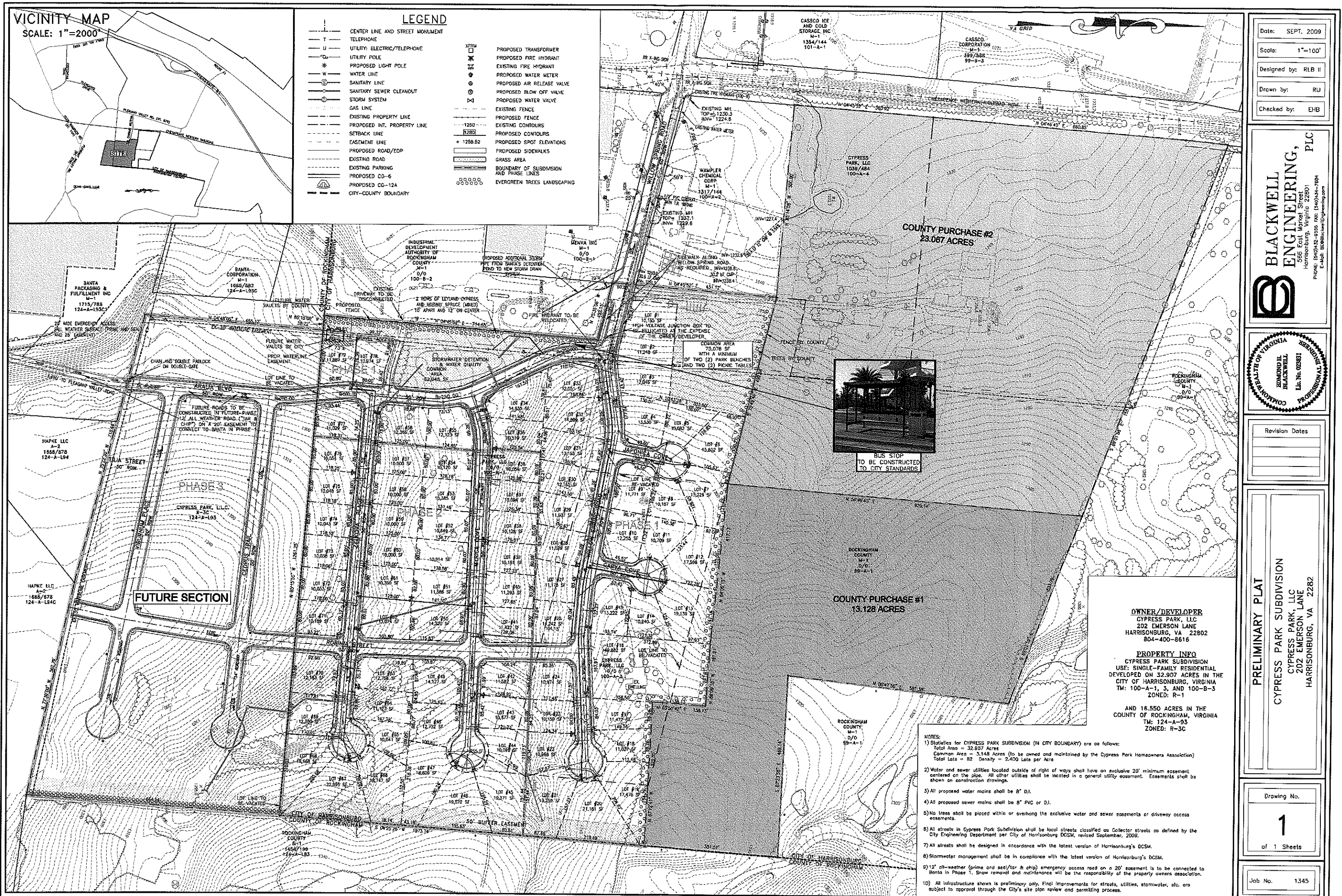
When the applicant originally submitted the plat during this review, there were no street connections between Willow Spring Road and Myrica Cove or connections between Zelkova Place and Cedrus Trail, which is one of the streets planned for the County portion of the development. Staff had several concerns with this layout because it created internal long cul-de-sacs within the overall long cul-de-sac that would make up this neighborhood. After suggestions by staff for the applicant to try to incorporate a more connected street grid by connecting the cul-de-sacs, the developer laid out Robinia Street as shown on the plat to facilitate a more interconnected neighborhood. Staff appreciates the developer's intent to improve traffic flow for this community; however there are additional concerns with this layout. Although the applicant's engineer has not fully engineered the final layout of the streets, the City Engineer roughly calculated the grade change between the street centerlines of Willow Spring Road and Myrica Cove as they are shown. Between these streets, the connection would be 285 feet in length with roughly 30 feet of grade change, which means the best case scenario would be a street with the center portion at 20 percent grade. This is double the City's standard while also forgiving landing grade requirements and sight distance requirements. Some regrading of Willow Spring Road and Myrica Cove could improve this situation; however they too are at a maximum grade at some sections of the street, which could force additional variances in their street designs and also for other streets. Staff is not supportive of the original design with the internal, long cul-de-sacs or the submitted design with the Robinia Street connecting the cul-de-sacs. These concerns give more bearing to the fact that residential development in this area should not exceed by right opportunities. If the applicant chooses to continue forward with the submitted design they would need variances from the DCSM Sections 3.6.2.3, 3.6.2.4, and 3.6.3. These sections are associated with landing requirements, vertical curves, and the geometric design of the streets, which includes maximum grade and sight distance.

Staff appreciates the applicant providing the emergency access into the subdivision; in emergency situations this should help provide additional support for responders. However, this access does not provide the answers to all of staff's concerns for the proposed development. As mentioned earlier, staff has concerns with allowing residential development in this area of the City, but due to its existing zoning the City must permit what the regulations allow. By right, the property owner could develop roughly 25 single family home lots in whatever public street fashion they deem is necessary and that also meets the City's design regulations. Staff does not believe it is prudent to build more single family homes in this area than what is allowed by right. It is unjustifiable to approve a variance that would expose more people than necessary to such living conditions. Seeing as there will be a homeowner's association, if this development is approved, future residents will have the burden of having to pay association fees and keeping a sound association in operation. Furthermore, these burdens would more than likely be placed upon lower income families because due to this property's location, the

development will probably cater more to that demographic. With the above issues in mind, staff recommends protecting the City and its residents from more harm than necessary.

Staff has been consistent since the original submissions of this plan of development and believes granting this variance is not in the best interests of the City. If the variance is granted however, staff has two recommended conditions. The developer shall construct the emergency access road so it is functional during the first phase of the project and the developer shall perform a diagnostic railroad review to determine if active controls are warranted for the railroad crossing. Because of the above discussed concerns, staff does not support the variance request to Section 3.1.10.2 of the DCSM and recommends denial of this preliminary plat application.



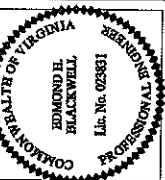


VICINITY MAP  
SCALE: 1"=2000'

LEGEND	
	CENTER LINE AND STREET MONUMENT
	TELEPHONE
	UTILITY: ELECTRIC/TELEPHONE
	UTILITY POLE
	PROPOSED LIGHT POLE
	WATER LINE
	SANITARY LINE
	SANITARY SEWER CLEANOUT
	STORM SYSTEM
	GAS LINE
	EXISTING PROPERTY LINE
	PROPOSED INT. PROPERTY LINE
	SETBACK LINE
	EASEMENT LINE
	PROPOSED ROAD/EOP
	EXISTING ROAD
	EXISTING PARKING
	PROPOSED CO-6
	PROPOSED CO-12A
	CITY-COUNTY BOUNDARY
	PROPOSED TRANSFORMER
	PROPOSED FIRE HYDRANT
	EXISTING FIRE HYDRANT
	PROPOSED WATER METER
	PROPOSED AIR RELEASE VALVE
	PROPOSED BLOW OFF VALVE
	PROPOSED WATER VALVE
	EXISTING FENCE
	PROPOSED FENCE
	EXISTING CONTOURS
	PROPOSED CONTOURS
	PROPOSED SPOT ELEVATIONS
	PROPOSED SIDEWALKS
	GRASS AREA
	BOUNDARY OF SUBDIVISION AND PHASE LINES
	EVERGREEN TREES LANDSCAPING

Date: SEPT. 2009  
Scale: 1"=100'  
Designed by: RLB II  
Drawn by: RU  
Checked by: EHB

**BLACKWELL ENGINEERING, PLC**  
565 East Market Street  
Harrisonburg, Virginia 22801  
Phone: (540) 432-4555 Fax: (540) 434-7004  
E-Mail: BBlackwell@blackwelleng.com



Revision	Date

**PRELIMINARY PLAT**  
**CYPRESS PARK SUBDIVISION**  
CYPRESS PARK, LLC  
202 EMERSON LANE  
HARRISONBURG, VA 22802

**OWNER/DEVELOPER**  
CYPRESS PARK, LLC  
202 EMERSON LANE  
HARRISONBURG, VA 22802  
804-400-8616

**PROPERTY INFO**  
CYPRESS PARK SUBDIVISION  
USE: SINGLE-FAMILY RESIDENTIAL  
DEVELOPED ON 32.907 ACRES IN THE  
CITY OF HARRISONBURG, VIRGINIA  
TM: 100-A-1, 3, AND 100-B-3  
ZONED: R-1  
  
AND 18.550 ACRES IN THE  
COUNTY OF ROCKINGHAM, VIRGINIA  
TM: 124-A-93  
ZONED: R-3C

- NOTES:
- 1) Statistics for CYPRESS PARK SUBDIVISION (IN CITY BOUNDARY) are as follows:  
Total Area = 32.907 Acres  
Common Area = 3.148 Acres (to be owned and maintained by the Cypress Park Homeowners Association)  
Total Lots = 82 Density = 2,400 Lots per Acre
  - 2) Water and sewer utilities located outside of right of ways shall have an exclusive 20' minimum easement centered on the pipe. All other utilities shall be located in a general utility easement. Easements shall be shown on construction drawings.
  - 3) All proposed water mains shall be 8" D.I.
  - 4) All proposed sewer mains shall be 8" PVC or D.I.
  - 5) No trees shall be placed within or overhanging the exclusive water and sewer easements or driveway access easements.
  - 6) All streets in Cypress Park Subdivision shall be local streets classified as Collector streets as defined by the City Engineering Department per City of Harrisonburg DCSM, revised September, 2008.
  - 7) All streets shall be designed in accordance with the latest version of Harrisonburg's DCSM.
  - 8) Stormwater management shall be in compliance with the latest version of Harrisonburg's DCSM.
  - 9) 12' all-weather (grime and seal/for & chip) emergency access road on a 20' easement is to be connected to Santa in Phase 1. Snow removal and maintenance will be the responsibility of the property owners association.
  - 10) All infrastructure shown is preliminary only. Final improvements for streets, utilities, stormwater, etc. are subject to approval through the City's site plan review and permitting process.

Drawing No.  
**1**  
of 1 Sheets

Job No. 1345

ROCKINGHAM COUNTY  
Chaz W. Evans-Haywood  
CLERK OF COURT  
Harrisonburg, VA 22801



60 2009 00008040

Instrument Number: 2009- 00008040

As

Deed of Easement

Recorded On: March 24, 2009

Parties: BANTA CORP

To

CYPRESS PARK LLC

Recorded By: CLARK & BRADSHAW PC

Num Of Pages: 13

Comment: PARCEL HBURG

**\*\* Examined and Charged as Follows: \*\***

Deed of Easement	6.50	11 - 30 Pages	28.50	Deed Processing Fee	10.00
Plat larger than legal	20.00	Tax on \$100 (City)	0.33		
Recording Charge:	65.33				

**\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\***

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: ROCKINGHAM COUNTY, VA

**File Information:**

Document Number: 2009- 00008040

Receipt Number: 131593

Recorded Date/Time: March 24, 2009 09:57:45A

Book-Vol/Pg: Bk-OR VI-3483 Pg-442

Cashier / Station: A Pittman / Cash Station 1

**Record and Return To:**

CLARK & BRADSHAW PC

92 NORTH LIBERTY ST

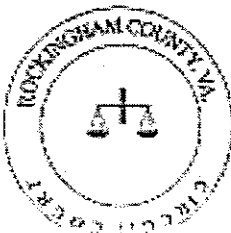
HARRISONBURG VA 22802

THE STATE OF VIRGINIA  
COUNTY OF ROCKINGHAM

I certify that the document to which this authentication is affixed is a true copy of a record in the Rockingham County Circuit Court Clerk's Office and that I am the custodian of that record.

Chaz W. Evans-Haywood, Clerk of Court

CLERK OF COURT  
ROCKINGHAM COUNTY VIRGINIA





**THIS DEED OF EASEMENT** (this "Easement"), made this 27<sup>th</sup> day of February, 2009, by and between **BANTA CORPORATION**, a Wisconsin corporation ("Grantor") and **CYPRESS PARK, LLC**, a Virginia limited liability company ("Grantee").

**RECITALS:**

1. Grantor is the owner of certain real property situate in the City of Harrisonburg, and Rockingham County, Virginia, and shown on: (i) the City of Harrisonburg Tax Map as 100 B 2 ("Parcel One") and (ii) the City of Harrisonburg Tax Map as 100 B 1 ("Parcel Two"; collectively, Parcel One and Parcel Two shall hereinafter be referred to as the "Property"). Parcel One was acquired by Grantor by deed dated December 30, 1994, from Willow Spring Properties, L.P., formerly Willow Spring Properties, a Virginia limited partnership, recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, in Deed Book 1324, page 251. Parcel Two was acquired by Menva, Inc., Grantor's predecessor-in-interest, by conveyance, release and assumption agreement dated September 27, 1976, recorded in the aforesaid Clerk's Office in Deed Book 481, page 670.

2. A portion of the Property is being more particularly described and shown on a plat (the "Plat") entitled "PLAT of a PRIVATE 20' STORM DRAIN

EASEMENT", made by Charles E. Wingard, L.S., dated August 14, 2006, (the "Easement Area"), which Plat is attached hereto and made a part hereof.<sup>1</sup>

3. It is the desire and intent of Grantor to grant and convey unto Grantee, an easement in the locations as shown on the Plat and as hereinafter provided.

WITNESSETH:

**NOW, THEREFORE**, in consideration of the premises and the sum of One Dollar (\$1.00), cash in hand paid, receipt of which is hereby acknowledged, Grantor does hereby grant and convey unto Grantee, it successors and assigns, an easement as hereafter set forth in the respective locations shown on the Plat and incorporated herein by reference as follows:

**PRIVATE 20' STORM DRAIN EASEMENT**

This Easement is for the purpose of installing, constructing, operating, maintaining, adding to, or altering present or future storm drainage ditches, lines, or other drainage structures and facilities, plus necessary inlet structures, manholes, and appurtenances for the collection of storm waters and its transmission through, across and upon the Property (the "Storm Drain"), said Easement being more particularly bounded and described on the Plat.

This Easement is subject to the following conditions:

---

<sup>1</sup> Grantee: Please attach and provide a copy.

1. Prior to entering the Property or the Easement Area for installation, removal or maintenance of improvements, Grantee shall provide Grantor with five (5) days written notice along with a schedule of activity.
2. Prior to entering the Property or the Easement Area for installation, removal or maintenance of improvements, Grantee and its agents and contractors shall: (i) obtain liability insurance naming Grantor as an additional insured in amounts reasonably acceptable to Grantor; (ii) provide proof thereof to Grantor; and (iii) maintain such insurance for the duration of such activity.
3. Grantee may not modify the size or capacity of the Storm Drain and shall not increase (or permit the increasing of) the flow onto the Storm Drain without first receiving Grantor's prior written consent.
4. All drainage lines and appurtenant facilities, which are installed on the Easement Area, shall be and remain the property of Grantee, its successors and assigns.
5. Except as provided for in this Easement, Grantee and its agents shall have full and free use of the Easement Area for the purposes named herein, and shall have all rights and privileges reasonably necessary to the exercise of the rights granted in this Easement including the right

to access to and from the Easement Area, provided that areas disturbed by Grantee shall promptly, at Grantee's sole cost and expense, be restored by backfilling of trenches and replacing surface conditions "in kind". Grantor agrees that Grantee or its agents can use existing gates or entrances for the most direct, but minimum impact, access to the Easement Area.

6. Grantee shall have the right to trim, cut, or prune trees and shrubbery, and to temporarily relocate or permanently remove the vegetation as referenced, utilities, fences, structures, or other obstructions or facilities within the Easement Area, reasonably deemed by it to interfere with the proper and efficient construction, operation, and maintenance of the Storm Drain but only as approved by Grantor in writing. Following completion of the Storm Drain, Grantee shall promptly repair and restore the Property to the same or better condition existing prior to any such relocation or removal permitted under this Paragraph 6. Pavement, sidewalk and grass/sod shall not be considered as presenting interference to the rights herein established.
7. This Easement is non-exclusive, and Grantor reserves the right to make use of the Easement Area in any way that does not materially

and adversely interfere with the use of this Easement by Grantee for the purposes named herein; provided, however, Grantor shall comply with all applicable ordinances and regulations.

8. Grantee, its employees, agents and licensees shall not adversely interfere with (i) Grantor's use of the Property, (ii) Grantor's operations conducted on the Property, or (iii) the business, employees or clients of any adjacent property owners or users of the Easement Area.
9. Grantee shall procure and maintain at its own expense, prior to entry upon the Property hereunder, all licenses, consents, permits, authorizations and other approvals required from any federal, state or local governmental authority in connection with the construction, placement and operation of the Storm Drain, and Grantee shall strictly observe all laws, rules, statutes and regulations of any governmental authorities having jurisdiction over the Property or Grantee's operations thereon. Grantor may from time to time request evidence that all such approvals have been obtained by Grantee and are in full force and effect. In no event shall Grantee seek any governmental approvals that may affect in any way Grantor's operations, including without limitation any zoning approvals, without in each instance

obtaining Grantor's prior written consent, which consent may be granted or withheld in Grantor's sole discretion.

10. In the event any aspect of Grantee's installation, modification, construction, placement, maintenance, repair, removal or operation of the Storm Drain at any time violates or is forbidden by any law, statute, rule, regulation, order or requirement of any governmental authority, Grantee shall immediately discontinue such operations and at its own expense take all required corrective action, including without limitation removal of all or any portion of the Storm Drain from the Property if required, within the lesser of (i) thirty (30) days from Grantee's notice of such violation or (ii) the period of time required by law for the correction of such violation.
11. Grantee shall install, maintain and use the Easement Area, and cause the Storm Drain to be installed, maintained and used by all persons or entities claiming by, through or under it, for the purposes permitted herein in compliance with all applicable legal requirements and in a manner which shall protect against damage or injury either to persons or property of Grantor (including without limitation the Property and the Easement Area) and any third party. Grantee hereby agrees to indemnify, defend and save Grantor harmless from any and all

liability, loss, damage, cost, obligation and expense which directly arises out of or results from any negligent act, whether of commission or omission, of Grantee, its agents, servants, tenants, visitors, invitees, licensees or others claiming by, through or under Grantee, occurring in or about the Property or the Easement Area, whether in the exercise of Grantee's rights hereunder or in breach or excess thereof.

12. Grantee has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by Grantee, operation of law or otherwise, to attach to or be placed upon Grantor's title or interest in the Easement Area and all liens and encumbrances created by Grantee shall attach to Grantee's interest only. Grantee shall not cause or permit any mechanics or materialmen liens to attach to or be placed upon the Easement Area.
13. Subject to the terms of this Paragraph 13, this Easement shall be effective as of the date hereof and shall continue and remain in full force and effect until Grantor and Grantee enter a written mutual agreement terminating this Easement. Neither this Easement nor any provision hereof may be extended, modified, or amended except with the written consent of both Grantor and Grantee and no extension,



modification or amendment shall be effective until it has been signed by all such parties.

14. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Property.
15. This Easement and the rights granted hereunder are subject and subordinate in all respects to all matters and conditions of record affecting the Easement Area.
16. Grantor has made no representations or warranties of any kind or nature whatsoever, whether written or oral, concerning the suitability of the Property or the Easement Area for the placement of the Storm Drain thereon or Grantee's use of the Easement Area for the purposes contemplated herein. In entering into this Easement, Grantee has relied solely upon such independent investigations of the condition of the Property as Grantee has deemed necessary or appropriate in its discretion, and Grantee has not relied upon any statements, representations or agreements of Grantor regarding the conditions of the Property. The Easement Area is granted in its AS-IS, WHERE-IS CONDITION, WITH ALL FAULTS, and Grantor has not agreed to undertake any improvements or other work to make the Property or

the Easement Area suitable for Grantee's intended use, except as may be otherwise expressly provided herein.

17. This Easement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

This Easement shall be binding upon Grantor, their successors and/or assigns and shall inure to the benefit of Grantee, its successors and assigns.

Grantee joins in this Easement to acknowledge and agree to the terms of the aforesaid easement which terms shall also bind its successors and assigns and the beneficiaries of this Easement.

IN WITNESS WHEREOF, Grantor and Grantee, have caused this Deed of Easement to be signed in their names and on their behalf as thereunto duly authorized.

BANTA CORPORATION, a Wisconsin corporation

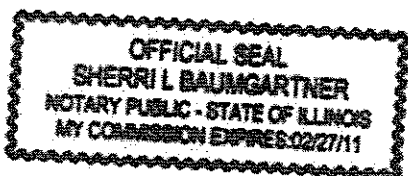
By: Thomas L. Moran (Seal)  
Title: Director, Real Estate

STATE OF ILLINOIS  
CITY/COUNTY OF, LAKE, to-wit:

The foregoing instrument was acknowledged before me in the aforesaid jurisdiction this 27th day of February, 2009, by Thomas L. Moran, Director, Real Estate on behalf of BANTA CORPORATION, a Wisconsin corporation.

My commission expires: 2/27/11

Sherril L. Baumgartner  
Notary Public



CYPRESS PARK LLC, a Virginia limited liability company

By: [Signature] (Seal)

Title: MANAGER

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF Harrisonburg, to-wit

The foregoing instrument was acknowledged before me in the aforesaid jurisdiction aforesaid this 3rd day of March February, 2009, by

John F. Girdley

Manager, of CYPRESS PARK LLC, a Virginia limited liability company, on behalf of the corporation.

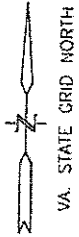
My commission expires: 6/30/2012

[Signature]  
Notary Public

CYNTHIA MUMAW LOHR  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #167499

AUGUST 14, 2006  
SCALE: 1"=100'

• = FOUND PIN  
□ = FOUND POST



CHESAPEAKE WESTERN RAILWAY  
N 04°45'52" E 953.12'

WILLOW SPRING ROAD  
S 75°36'08" E 659.30'

PRIVATE 20' STORM  
DRAIN EASEMENT  
(1,013 SQ. FT.)

MENVA, INC.  
DB 481/570  
TM 100 (B) 1

PRIVATE 20' STORM DRAIN  
EASEMENT  
(4,827 SQ. FT.)

INDUSTRIAL DEVELOPMENT  
AUTHORITY OF ROCKINGHAM  
COUNTY, VIRGINIA  
DB 571/339  
BANTA CORPORATION  
DB 1324/251  
TM 100 (B) 2

CITY OF HARRISONBURG  
ROCKINGHAM COUNTY

LOT 1, SECTION 1, BANTA SUBDIVISION  
PLAT DB 1695/582  
BANTA PACKAGING & FULFILLMENT, INC.  
DB 1715/786  
TM 124 (A) 93C1 (ROCKINGHAM COUNTY)

WILLOW SPRING RD.  
PLEASANT VALLEY RD.  
GREENDALE ROAD  
C.W. RR.  
SITE  
VICINITY MAP 1"=2000'

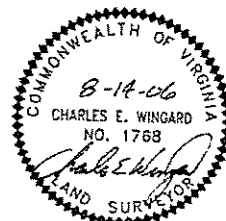
CYPRESS PARK, LLC  
DB 2783/550  
TM 100-A-1

WATERLINE  
EASEMENT  
DB 1788/647

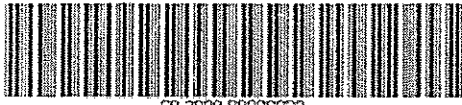
# PLAT OF A PRIVATE 20' STORM DRAIN EASEMENT

CITY OF HARRISONBURG, VIRGINIA

BENNER & ASSOC., INC.  
8 PLEASANT HILL ROAD  
HARRISONBURG, VA 22801  
540 434-0267  
REF# 120103



ROCKINGHAM COUNTY  
Chaz W. Evans-Haywood  
CLERK OF COURT  
Harrisonburg, VA 22801



60 2009 00008039

Instrument Number: 2009- 00008039

As

Deed of Easement

Recorded On: March 24, 2009

Parties: BANTA CORP

To

CYPRESS PARK LLC

Recorded By: CLARK & BRADSHAW PC

Num Of Pages: 12

Comment: PARCEL ASHBY

**\*\* Examined and Charged as Follows: \*\***

Deed of Easement	6.50	11 - 30 Pages	28.50	Deed Processing Fee	10.00
Open Space Preservation County	1.00	Plat larger than legal	20.00	Tax on \$100 (County)	0.33
Recording Charge:	66.33				

**\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\***

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: ROCKINGHAM COUNTY, VA

**File Information:**

**Record and Return To:**

Document Number: 2009- 00008039

CLARK & BRADSHAW PC

Receipt Number: 131593

92 NORTH LIBERTY ST

Recorded Date/Time: March 24, 2009 09:57:44A

HARRISONBURG VA 22802

Book-Vol/Pg: Bk-OR VI-3483 Pg-430

Cashier / Station: A Pittman / Cash Station 1

THE STATE OF VIRGINIA  
COUNTY OF ROCKINGHAM

I certify that the document to which this authentication is affixed is a true copy of a record in the Rockingham County Circuit Court Clerk's Office and that I am the custodian of that record.

  
CLERK OF COURT  
ROCKINGHAM COUNTY, VIRGINIA



**THIS DEED OF EASEMENT** (this "Easement"), made this 27<sup>th</sup> day of February, 2009, by and between **BANTA CORPORATION**, a Wisconsin corporation ("Grantor"), and **CYPRESS PARK, LLC**, a Virginia limited liability company ("Grantee").

**RECITALS:**

1. Grantor is the owner of certain real property, situate in the City of Harrisonburg, Virginia, as shown on the Rockingham County Tax Map as 124(A)93C 1 (the "Property"). The Property was acquired by Grantor by deed dated May 17, 1999, recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, in Deed Book 1715, page 786. A plat made by Hal T. Benner, L.S., dated July 21, 2008, entitled "Plat of A 25' Permanent Emergency Access Easement through the Land of Banta Packaging & Fulfillment, Inc." is attached hereto and recorded herewith (the "Plat").<sup>1</sup>

2. It is the desire and intent of Grantor to grant and convey unto the Grantee, the easement in the location as shown on the Plat and as hereinafter provided (the "Easement Area").

---

<sup>1</sup> Grantee: Please attach and provide a copy.



WITNESSETH:

**NOW, THEREFORE**, in consideration of the premises and the sum of One Dollar (\$1.00), cash in hand paid, receipt of which is hereby acknowledged, Grantor does hereby grant and convey unto Grantee, it successors and assigns, the twenty-five (25') foot temporary emergency access easement as shown and described on the aforesaid Benner Plat, **together with** a slope easement for and the right to construct, replace, remove or modify a slope<sup>2</sup> over and across that certain real property adjacent to the Easement herein granted for the purpose of constructing and maintaining the easement for ingress and egress as required by the City of Harrisonburg for emergency vehicles (the "Emergency Access Easement").

The Emergency Access Easement is subject to the following conditions:

- a. Prior to entering the Property or the Easement Area for installation, removal or maintenance of improvements, Grantee shall provide Grantor with five (5) days written notice along with a schedule of activity.
- b. Prior to entering the Property or the Easement Area for installation, removal or maintenance of improvements, Grantee and its agents and contractors shall: (i) obtain liability insurance naming Grantor as an additional insured in

---

<sup>2</sup> Grantee: Please provide specifications for this work.

amounts reasonably acceptable to Grantor and Grantee; (ii) provide proof thereof to Grantor; and (iii) maintain such insurance for the duration of such activity.

c. The Emergency Access Easement shall serve and be used by emergency vehicles of the City of Harrisonburg, Virginia, and/or the County of Rockingham, Virginia, including, but not limited to fire and rescue vehicles as an alternate access to property of Grantee being developed into a residential subdivision and for no other purpose ("Emergency Services").

d. The entrance to the Easement Area will be gated by Grantee with Emergency Services and Grantor having keys for the gate. Grantee shall be solely responsible for all costs of constructing the access from Grantee's land to the existing fire lane of Grantor and for all gates and keys required by Emergency Services. Further, Grantee agrees to indemnify and hold Grantor harmless from all costs, claims and liability and for use of and access to the Easement Area by Grantee or its agents, successors or assigns and Emergency Services.

e. Grantee and its successors or assigns, will be solely responsible for the cost and maintenance of the Emergency Access Easement from Grantee's property line to Grantor's existing fire lane.

f. This Easement is non-exclusive, and Grantor reserves the right to make use of the Easement Area in any way that does not materially and adversely interfere with the use of this Easement by Grantee and Emergency Services for the

purposes named herein; provided, however, Grantor shall comply with all applicable ordinances and regulations.

g. Grantee, its employees, agents and licensees shall not adversely interfere with (i) Grantor's use of the Property, (ii) Grantor's operations conducted on the Property, or (iii) the business, employees or clients of any adjacent property owners or users of the Easement Area.

h. Grantee shall not erect buildings or structures within the Easement Area.

i. Grantor reserves the right to relocate the Emergency Access Easement, so long as it provides emergency access to Grantee's property. Grantee shall cooperate with Grantor and Emergency Services for any relocation requested by Grantor.

j. This Easement shall automatically terminate with the dedication of a public road or other easement agreeable to the City of Harrisonburg, Virginia and/or the County of Rockingham, Virginia providing an alternate and reasonably acceptable access to Grantee's property.

k. Grantee shall procure and maintain at its own expense, prior to entry upon the Property hereunder, all licenses, consents, permits, authorizations and other approvals required from any federal, state or local governmental authority in connection with the installation, removal or maintenance of improvements for the

Emergency Access Easement, and Grantee shall strictly observe all laws, rules, statutes and regulations of any governmental authorities having jurisdiction over the Property or Grantee's operations thereon. Grantor may from time to time request evidence that all such approvals have been obtained by Grantee and are in full force and effect. In no event shall Grantee seek any governmental approvals that may affect in any way Grantor's operations, including without limitation any zoning approvals, without in each instance obtaining Grantor's prior written consent, which consent may be granted or withheld in Grantor's sole discretion.

l. In the event any aspect of Grantee's installation, modification removal or maintenance of improvements for the Emergency Access Easement at any time violates or is forbidden by any law, statute, rule, regulation, order or requirement of any governmental authority, Grantee shall immediately discontinue such operations and at its own expense take all required corrective action within the lesser of (i) thirty (30) days from Grantee's notice of such violation or (ii) the period of time required by law for the correction of such violation.

m. Grantee shall install, maintain and use the Emergency Access Easement, and cause the Emergency Access Easement to be installed, maintained and used by all persons or entities claiming by, through or under it, for the purposes permitted herein in compliance with all applicable legal requirements and in a manner which shall protect against damage or injury either to persons or

property of Grantor (including without limitation the Property and the Easement Area) and any third party. Grantee hereby agrees to indemnify, defend and save Grantor harmless from any and all liability, loss, damage, cost, obligation and expense which directly arises out of or results from any negligent act, whether of commission or omission, of Grantee, its agents, servants, tenants, visitors, invitees, licensees or others claiming by, through or under Grantee, occurring in or about the Property or the Easement Area, whether in the exercise of Grantee's rights hereunder or in breach or excess thereof.

n. Grantee has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by Grantee, operation of law or otherwise, to attach to or be placed upon Grantor's title or interest in the Easement Area and all liens and encumbrances created by Grantee shall attach to Grantee's interest only. Grantee shall not cause or permit any mechanics or materialmen liens to attach to or be placed upon the Easement Area.

o. Subject to the terms of this Paragraph o, this Easement shall be effective as of the date hereof and neither this Easement nor any provision hereof may be extended, modified, or amended except with the written consent of both Grantor and Grantee and no extension, modification or amendment shall be effective until it has been signed by all such parties.

p. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Property except for Emergency Services.

q. This Easement and the rights granted hereunder are subject and subordinate in all respects to all matters and conditions of record affecting the Easement Area.

r. Grantor has made no representations or warranties of any kind or nature whatsoever, whether written or oral, concerning the suitability of the Property or the Easement Area for the Emergency Access Easement thereon or Grantee's use of the Easement Area for the purposes contemplated herein. In entering into this Easement, Grantee has relied solely upon such independent investigations of the condition of the Property as Grantee has deemed necessary or appropriate in its discretion, and Grantee has not relied upon any statements, representations or agreements of Grantor regarding the conditions of the Property. The Easement Area is granted in its AS-IS, WHERE-IS CONDITION, WITH ALL FAULTS, and Grantor has not agreed to undertake any improvements or other work to make the Property or the Easement Area suitable for Grantee's intended use, except as may be otherwise expressly provided herein.

s. This Easement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

This Easement shall be binding upon Grantor, its successor and/or assigns and shall inure to the benefit of Grantee, its successors and assigns.

Grantee joins in this Easement to acknowledge and agree to the terms of the aforesaid easement which terms shall also bind its successors and assigns and the beneficiaries of this Easement.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Easement to be signed in their names and on their behalf as thereunto duly authorized.

BANTA CORPORATION, a Wisconsin corporation

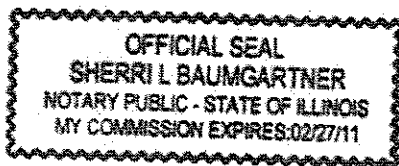
By: Thomas L. Moran (Seal)  
Title: Director, Real Estate

STATE OF ILLINOIS  
CITY/COUNTY OF, LAKE, to-wit:

The foregoing instrument was acknowledged before me in the aforesaid jurisdiction this 27th day of February, 2009, by Thomas L. Moran, Director, Real Estate on behalf of Banta Corporation, a Wisconsin corporation.

My commission expires: 2/27/11

Sherri L. Baumgartner  
Notary Public





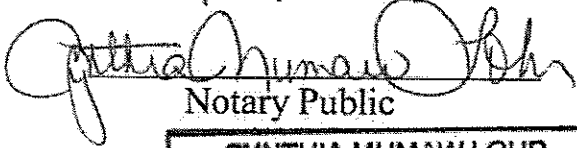
CYPRESS PARK, LLC, a Virginia limited liability company

By:  (Seal)  
JOHNE F. GIRDLEY, Manager

COMMONWEALTH OF VIRGINIA  
CITY OF HARRISONBURG, to-wit

The foregoing instrument was acknowledged before me in the aforesaid jurisdiction aforesaid this day 3rd of <sup>March</sup>~~February~~, 2009, by JOHNE F. GIRDLEY, Manager of Cypress Park, LLC, a Virginia limited liability company, on behalf of the company.

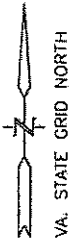
My commission expires: 10/30/2012

  
Notary Public

CYNTHIA MUMAW LOHR  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #167499

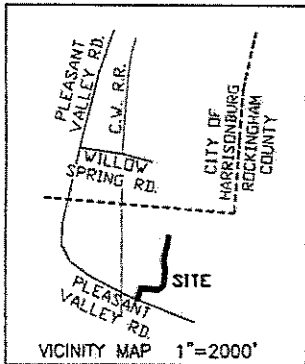
JULY 21, 2008  
SCALE: 1"=100'

○ = FOUND PIN

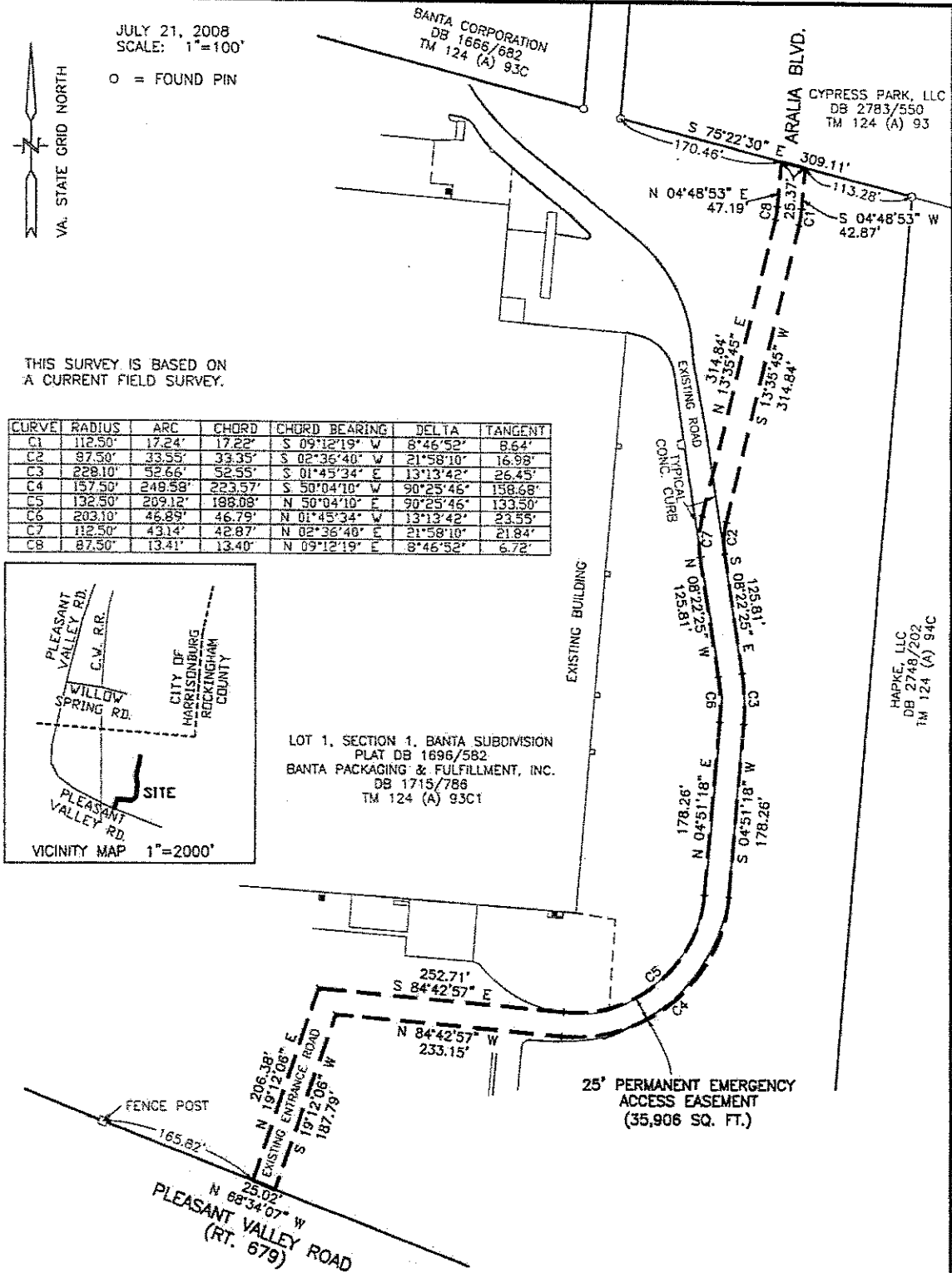


THIS SURVEY IS BASED ON  
A CURRENT FIELD SURVEY.

CURVE	RADIUS	ARC	CHORD	CHORD BEARING	DELTA	TANGENT
C1	112.50'	17.24'	17.22'	S 09°12'19" W	8°46'52"	8.64'
C2	97.50'	33.55'	33.35'	S 02°36'40" W	21°58'10"	16.98'
C3	228.10'	52.66'	52.55'	S 01°45'34" E	13°13'42"	26.45'
C4	157.50'	248.58'	223.57'	S 50°04'10" W	90°25'46"	158.68'
C5	132.50'	209.12'	198.08'	N 50°04'10" E	90°25'46"	133.50'
C6	203.10'	46.89'	46.79'	N 01°45'34" W	13°13'42"	23.55'
C7	112.50'	43.14'	42.87'	N 02°36'40" E	21°58'10"	21.84'
C8	87.50'	13.41'	13.40'	N 09°12'19" E	8°46'52"	6.72'



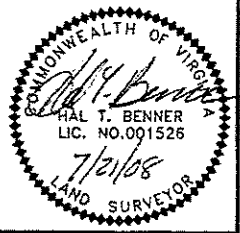
LOT 1, SECTION 1, BANTA SUBDIVISION  
PLAT DB 1696/582  
BANTA PACKAGING & FULFILLMENT, INC.  
DB 1715/788  
TM 124 (A) 93C1



# PLAT OF A 25' PERMANENT EMERGENCY ACCESS EASEMENT THROUGH THE LAND OF BANTA PACKAGING & FULFILLMENT, INC.

ASHBY DISTRICT, ROCKINGHAM COUNTY, VIRGINIA

BENNER & ASSOC., INC.  
8 PLEASANT HILL ROAD  
HARRISONBURG, VA 22801  
540 434-0267  
REF# 120103



Date Application Received: \_\_\_\_\_

Total Paid: \_\_\_\_\_

## Application for Preliminary Subdivision Plat Approval

### City of Harrisonburg, Virginia

Fee: w/o Variance Request  
Variance Request

\$150.00 plus \$10.00 per lot  
\$175.00 plus \$10.00 per lot

Plus fees for TIA reviews where  
applicable (see back for details)

I, John F. Girdley, hereby apply for preliminary subdivision plat approval for the following property located within the City of Harrisonburg:

#### Description of Property

Title of Subdivision: Cypress Park  
Location (Street Address): 1120 Willow Spring Rd. Sheet: \_\_\_\_\_ Block: \_\_\_\_\_ Lot: \_\_\_\_\_  
Total Acreage: 32.907 Number of Lots Proposed: 79 Zoning Classification: R-1  
TM: 100-A-1, 3 and 100-B-3  
Proposed Use of Property: Single-Family Detached Dwellings

#### Property Owner's Name: Cypress Park, LLC

Street Address: 202 Emerson Lane Email: jjgirdley@girdleyofva.com  
City: Harrisonburg State: VA Zip: 22801  
Telephone: Work 540-442-1255 Fax \_\_\_\_\_ Mobile \_\_\_\_\_

#### Owner's Representative (if applicable): Blackwell Engineering, PLC

Street Address: 566 E. Market St. Email: basil@blackwellengineeirng.com  
City: Harrisonburg State: VA Zip: 22801  
Telephone: Work 540-432-9555 Fax 540-434-7604 Mobile \_\_\_\_\_

#### Developer: Girdley Construction of Virginia

Telephone: 804-400-8616 Email: jjgirdley@girdleyofva.com

#### Surveyor/Engineer: Blackwell Engineering, PLC

Telephone: 540-432-9555 Email: ed@blackwellengineering.com

#### VARIANCES

NOTE: If a variance is requested, please provide the following information:

I (we) hereby apply for a variance from Section 10.2.42.i of the City of Harrisonburg  
Subdivision Ordinance and/or Section 3.1.10.2 of the City of Harrisonburg Design and  
Construction Standards Manual, which require(s):

Lot dimensions in conformance with Chapter 3 of the Code. Chapter 3,  
Article H, Section 3-3-35 requires 80 foot lot width frontage.  
The Common Area immediately to the north (left) when entering Cypress Park  
has a 40 foot entrance width. 3.1.10.2 limits the length of a cul-de-sac  
to 800'. The Planning Department considers this subdivision one large  
cul-de-sac.


I (we) believe a variance should be granted based on the following "unnecessary hardship" which is peculiar to  
the property in question (See Section 10-2-2 of the Subdivision Ordinance):

The 40' frontage to the Common Area/Park will be used to provide homeowners'  
access. This Common Area is dedicated as a park for Cypress Park Subdivision.  
Providing an 80' frontage would require removal of one housing lot.  
Alternatively, the Common Area/Park can be eliminated and replaced with a  
cul-de-sac and four (4) additional housing lots. See Page 2 for more.

The City of Harrisonburg's preliminary plat and subdivision requirements are in the code of the City of  
Harrisonburg, Subdivision Ordinance, Sections 10-2-1 through 10-2-86. Please read these requirements  
carefully.

**Certification:** *I have read the ordinance requirements. I also certify that the information contained herein is true and accurate.*

Signature: \_\_\_\_\_  
Property Owner

Signature:   
Applicant, if different from owner

**See Back for Additional Application Fees Regarding TIA Reviews**

## TIA Review Fees

- (a). Would the development from this preliminary plat require a Traffic Impact Analysis by VDOT?  
Yes \_\_\_\_\_ No x

*If yes, then fees must be made payable to VDOT to cover costs associated with the TIA review.*

***PLEASE NOTE – If a TIA is required, this application shall not be considered accepted until the TIA has been reviewed.***

- (b). Would the development from this preliminary plat require a Traffic Impact Analysis review by the City?  
Yes x No \_\_\_\_\_ TIA has been completed and approved.

*If yes, then an additional \$1,000.00 must be made payable to the City to cover costs associated with the TIA review.*

***PLEASE NOTE – If a TIA is required, this application shall not be considered accepted until the TIA has been reviewed.***

continuation from Page 1:

This subdivision's only current available access is from Willow Spring Road. The TIA has shown that this subdivision will not impact this road in a way that will reduce traffic levels of service. Provision has been made to access developable property to the south, if or when that occurs. In addition, provisions for an emergency access road have been made.



# City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

## STAFF REPORT

September 9, 2009

### ZONING ORDINANCE AMENDMENT

#### Section 10-3-139 (b)

City staff is proposing to amend the portion of the Zoning Ordinance that outlines the procedures on applications and appeals for the Board of Zoning Appeals (BZA) Section 10-3-139. The proposed modification falls within subsection (b), which is the segment that defines the period in which violations must be corrected or appealed prior to the City taking legal action to rectify zoning violations. Specifically, the amendment would implement a ten day process—rather than a 30 day process—for notices of violations to property owners when they are involving temporary or seasonal commercial uses, maximum occupancy limitation of residential dwelling units, keeping of inoperable vehicles and junk, or similar short term, recurring violations.

The above discussed zoning violations are the most common types of zoning infringements that can be visually seen in the city and hence are the most regular complaints received by staff and witnessed by staff during our monthly pro-active zoning program. The Code of Virginia Section 15.2-2286 gives the City the authority to prescribe an appeal period of less than 30 days, but not less than 10 days, for notice of zoning violations pertaining to the above mentioned infringements. Staff would like to initiate this change to offer a quicker and stronger management method for enforcing the City's most recurring zoning violations.

Staff is proposing for subsection (b) to read as follows (the proposed additions are shown in italics):

An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrator, or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this chapter. Such appeal shall be taken within *ten (10) days for a notice of violation involving temporary or seasonal commercial uses, maximum occupancy limitation of a residential dwelling unit, keeping of inoperable vehicles and junk, or similar short term, recurring violations, or within thirty (30) days after the entry of the any other decision* appealed from by filing with the administrator, and with the board, a notice of appeal specifying the grounds thereof. The administrator shall forthwith transmit to the recording secretary of the board all the papers constituting the record upon which the action appealed was taken. An appeal stays all proceedings in the furtherance of the action appealed from unless the administrator certifies to the board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate of stay would, in his opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or a court of record, on application and on notice to the administrator and on due cause shown.

In any case where the administrator has certified conformity with the provisions of this chapter and a building permit has been issued and construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of the zoning ordinance, suit may be filed within fifteen (15) days after the start of construction by a person who had no actual notice of the issuance of such permit. The court may hear and determine issues raised in the litigation even though no appeal was taken from the decision of the administrator to the board of zoning appeals.

The proposed change is for the described violations only (the storage of junk and debris, inoperable vehicles, occupancy concerns, etc.), and therefore would not change the enforcement timeline of other zoning violations such as illegal uses, setback infringements, and so forth. Implementing this new procedure should strengthen our enforcement capability and ultimately keep the city clean of undesirable nuisances. Staff supports a favorable recommendation to City Council.

# ORDINANCE AMENDMENT

**Zoning Ordinance  
Section 10-3-139**

# Draft

## ORDINANCE AMENDING AND RE-ENACTING SECTION

10-3-139

OF THE

CODE OF ORDINANCES

CITY OF HARRISONBURG, VIRGINIA

### **Be it ordained by the Council of the City of Harrisonburg, Virginia:**

**That Section 10-3-139 be amended as follows:**

#### **Section 10-3-139. Procedure on Applications and Appeals.**

**Amend subsection (b) as shown:**

*(b) Appeals.* An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrator, or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this chapter. Such appeal shall be taken within *ten (10) days for a notice of violation involving temporary or seasonal commercial uses, maximum occupancy limitation of a residential dwelling unit, keeping of inoperable vehicles and junk, or similar short term, recurring violations, or within thirty (30) days* after the entry of ~~the~~ *any other* decision appealed from by filing with the administrator, and with the board, a notice of appeal specifying the grounds thereof. The administrator shall forthwith transmit to the recording secretary of the board all the papers constituting the record upon which the action appealed was taken. An appeal stays all proceedings in the furtherance of the action appealed from unless the administrator certifies to the board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate of stay would, in his opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or a court of record , on application and on notice to the administrator and on due cause shown.



# Draft

In any case where the administrator has certified conformity with the provisions of this chapter and a building permit has been issued and construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of the zoning ordinance, suit may be filed within fifteen (15) days after the start of construction by a person who had no actual notice of the issuance of such permit. The court may hear and determine issues raised in the litigation even though no appeal was taken from the decision of the administrator to the board of zoning appeals.

The remainder of Section 10-3-139 is reaffirmed and reenacted in its entirety, except as hereby modified.

This ordinance shall be effective from the \_\_\_\_\_ day of \_\_\_\_\_, 2009.  
Adopted and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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**MAYOR**

ATTESTE:

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CLERK OF THE COUNCIL

## September 2009 Proactive-Zoning Report

For the month of September 2009 the proactive-zoning program targeted the **N. Main Street** section of the city. During the proactive inspections a total of **four violations** were found. This was a decrease in the number of violations from the first 3-year cycle and the same number of violations from the second 3-year cycle as noted in the chart below. The violations consisted of inoperable vehicles and discarded materials.

MONTH	SECTOR	VIOLATIONS	CORRECTED	1 <sup>st</sup> CYCLE	2 <sup>nd</sup> CYCLE
December 2008	Wyndham Woods	4	4	2	0
January 2009	Northfield	19	19	21	6
February 2009	Purcell Park	5	5	7	6
March 2009	Parkview	16	16	19	7
April 2009	Northeast	63	59	80	45
May 2009	Ind./Tech Park	0	0	0	1
June 2009	Exit 243	1	1	10	0
July 2009	Fairway Hills	0	0	1	0
August 2009	Smithland Rd.	0	0	0	4
September 2009	N. Main St.	4	n/a	13	4
October 2009	Liberty St.			6	4
November 2009	Westover			18	8
December 2009	Garber's Church			1	2
January 2010	Spotswood Acres			6	4
February 2010	Jefferson St.			26	22
March 2010	Forest Hills/JMU			6	1
April 2010	S. Main			1	0
May 2010	Hillandale			7	5
June 2010	Maplehurst/JMU			6	5
July 2010	Long /Norwood			12	28
August 2010	Greystone			13	10
September 2010	Greendale/SE			3	2
October 2010	Ramblewood			4	8
November 2010	Stone Spring Village/JMU			2	10
December 2010	Sunset Heights			7	29
January 2011	Reherd Acres			10	12
February 2011	RT 33 West			0	16
March 2011	Chicago Ave			16	22
April 2011	Pleasant Hill			4	13
May 2011	Avalon Woods			7	26
June 2011	Waterman Elementary			6	61
July 2011	Bluestone Hills & Valley Mall			3	33
August 2011	Keister Elementary			6	5
September 2011	500-600 S. Main			7	30
October 2011	Court Square			0	3
November 2011	Preston Heights			8	3

The proactive-zoning program for October 2009 will be directed towards the enforcement of the Zoning Ordinance in the **Liberty Street** section of the City.

# Proactive Zoning Map

